



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,015	09/12/2003	Todd D. Gatts	9407-7	6792

7590 05/15/2007  
Myers Bigel Sibley & Sajovec, P.A.  
P.O. Box 37428  
Raleigh, NC 27627

EXAMINER
----------

FAULK, DEVONA E

ART UNIT	PAPER NUMBER
----------	--------------

2615

MAIL DATE	DELIVERY MODE
-----------	---------------

05/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/661,015	<b>Applicant(s)</b> GATTS, TODD D.	
	<b>Examiner</b> Devona E. Faulk	<b>Art Unit</b> 2615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-12, 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 1-6, 13-16 and 19-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/12/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/13/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, filed 2/13/2007, with respect to the rejection(s) of claim(s) 1-5,13-16,19-23 under 103(a) have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 112 rejections.

2. Claims 6-12,17,18 and 24-30 were indicated as having allowable subject matter.
3. Claims 7-9,17,18,19,24,25-27 have been rewritten in independent form.
4. Claims 7-12,17,18 are in allowable form.
5. The indicated allowability of claims 19-24 is withdrawn in view of the newly discovered reference(s) to 35 USC 101. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 19-30 recite a "computer program product". A program is non-statutory matter. Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are

not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material.

An example of acceptable language is “ a computer readable medium encoded with”  
one of the following : a computer program , software, and computer executable  
instructions.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly  
claiming the subject matter which the applicant regards as his invention.

8. Claims 1-6,13-16,19-23 are rejected under 35 U.S.C. 112, second paragraph, as  
being indefinite for failing to particularly point out and distinctly claim the subject matter  
which applicant regards as the invention. Claims 1-6,13-16,19-23 recite “wherein the  
time-changed audio information occurs closer in time to the second audio information  
than the first audio information”. The specification discloses, on page 7, line14-page 8,  
of time-expanding the audio information to produce a time-changed audio information  
but there is no disclosure that the audio information occurs closer in time to the second  
audio information. The language used by the applicant is ambiguous.

***Allowable Subject Matter***

9. Claims 7-12,17,8 are allowed.

Regarding claims 7,8,17 and 18 the prior art Mahmoud (US 4,882,743) discloses a  
multi-location videoconference system. Prior art Davis (US 5,454,041) discloses a mix-  
minus monitory system. Prior art Elliot et al. (US 2004/0180641) discloses a variable  
delay radio receiver. Prior art Moeller et al. (US 6,353,632) discloses video processing  
system with real time program duration compression and expansion. Regarding claims

Art Unit: 2615

7,8,17 and 18, the prior art or combination thereof fails to disclose or make obvious combining the time-changed audio information with second audio information that is responsive to the first audio information to provide broadcast audio information wherein a difference between the first time interval and the second time interval is based on a delay between a transmission time at which the first (or second) audio information is transmitted from a source to a destination and a reception time at which the first (or second) audio information is received at the destination.

Regarding claim 9, the prior art or combination thereof fails to disclose or make obvious combining the time-changed audio information with second audio information that is responsive to the first audio information to provide broadcast audio information wherein a difference between the first time interval and the second time interval is based on a first delay between a first transmission time at which the first audio information is transmitted from a source to a destination and a first reception time at which the first audio information is received at the destination and further based on a difference between the first time interval and the second time interval is based on a second delay between a second transmission time at which the second audio information is transmitted from the destination to the source and a second reception time at which the second audio information is received at the source.

Therefore the prior art or combination thereof fails to disclose or make obvious a method of processing audio information for broadcast to an audience as claimed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 571-272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848.

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2615. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/661,015  
Art Unit: 2615

Page 7

DEF



VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600